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DELINEATED

4/22/2010

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 9.08.001, 9.08.002, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 AND 9.08.160 AND CREATING SECTION 9.08.000, 9.08.095 AND 9.08.098 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO TREES AND SHRUBS AND REPEALING THE ORIGINALS OF SECTIONS 9.08.001, 9.08.002, 9.08.003, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.040, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 AND 9.08.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 9.08.000 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Definitions.** The following terms, as used in this chapter, shall have the following meanings:

‘Alter’ means to cut, girdle, prune, destroy, remove or in any manner injure a tree or large shrub.

‘City’ means the City of Wichita.

‘City Council’ means the City Council of the City of Wichita.

‘Dangerous Tree’ is any tree, large shrub or part thereof, living or dead, which an officer, designated to enforce the provisions of this chapter, finds is in

such a condition and is located in such a place as to constitute a danger to persons or property in the vicinity of the tree.

‘Dead Tree’ is any tree, large shrug or branch which an officer designated to enforce the provisions of this chapter has determined that no part of the tree or branch is living.

‘Director’ means the Director of the Wichita Park and Recreation Department or his or her designee.

‘Diseased or infected tree’ is any tree or large shrub which is infected or infested with any tree or plant disease or insect, pest or larvae, which an officer, designated to enforce the provisions of this chapter, finds that the uncontrolled presence of such disease or infestation constitutes a hazard to or could result in damage to or destruction of other trees in the community.

‘Owner’ means the owner or person in control of the property.

‘Park property’ means all grounds, roadways and land acquired or owned by the City and all grounds, roadways and land owned by the Board of Park Commissioners of the City of Wichita, Kansas, which are designated for use as a park by the City Council.

‘Person’ means individuals, groups, organizations, associations, partnerships, firms and corporations.

‘Public right-of-way’ means the entire width of the area from property line to property line, including the area between the roadway and the abutting private property line.

‘Street’ means the entire width between property lines of every way publicly maintained when any part of the area is open to use by the public for purposes of vehicular travel. Such term shall include highways, avenues, boulevards, trafficways, alleys or any other public way for vehicular travel by whatever name.

‘Trees’ shall mean trees, tree materials and large shrubs.”

SECTION 2. Section 9.08.001 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Declaration of pPolicy as to regarding costs of tree maintenance .**

~~It is hereby declared to be the policy of the City of Wichita that t~~The cost of  
~~planting, maintaining, trimming pruning, removal and care of trees and large~~  
~~shrubs in the street public rights-of-way shall be borne by the responsibility of the~~  
~~eCity at large and paid for out of the special forestry tax levy authorized by House~~  
~~Bill 137 of the 1961 session of the Kansas Legislature, said tax to be levied by the~~  
~~governing body only after approval of a budget of expenditures prepared and~~  
~~submitted by the board of park commissioners, such levy in no event to exceed~~  
~~one mill on the dollar of taxable tangible property of Wichita.”~~

SECTION 3. Section 9.08.002 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Duties of board of park commissioners Director of Park and Recreation.** (a) ~~The board of park commissioners~~ Director of Park and Recreation ~~is hereby charged with the performance of~~ responsible for all

functions ~~in connection with~~ relating to trees, ~~shrubs and growing plants~~ within the City of Wichita, ~~except only the levying of the special forestry tax referred to in Section 9.08.001 hereof and the imposing of special assessments for the destruction of trees growing on private property as provided in Section 9.08.100 hereof.~~

(b) The Director of Parks and Recreation, the Office of Central Inspection and the Wichita Department of Public Works shall be responsible for the enforcement of all provisions of this Code.

(c) All officers responsible for the enforcement of this chapter, are hereby authorized to make such investigations, to issue notice, orders and directions as are necessary for the enforcement of the provisions of this chapter.”

SECTION 4. Section 9.08.005 of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Injuring trees, ~~shrubs, etc.,~~ on public property.** It shall be unlawful for any person to ~~cut, trim, girdle, remove, destroy or in any manner injure~~ alter any shade tree, shrub, flower, or other ornamental plant standing or growing, wholly or in partly, in or on any park property, ~~parkway, boulevard~~ street or on any public property of the city, board of park commissioners, ~~board of education,~~ board of regents, library board, art museum board, Historic Wichita or other board or commission that may own, lease or be responsible for the maintenance of property ~~located within~~ owned by the City of Wichita.”

SECTION 5. Section 9.08.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**Injuring trees, shrubs, etc.--Consent.** (a) It shall be unlawful for any person to ~~cut, trim, prune, girdle, destroy, remove or in any manner injure~~ alter any trees standing or growing, wholly or in partly in or on any street, ~~alley,~~ public ~~highway right-of-way, or public park or other public reservations in the~~ city property without the consent of the ~~board of park commissioners~~ Director.

(b) The provisions of subsection (a) shall not apply to:

(1) the removal of branches which are less than two (2) inches in diameter which are required to be removed to maintain six (6) feet of clearance above sidewalks and 13.5 feet of clearance above streets; and

(2) the removal of water sprouts, and suckers."

SECTION 6. Section 9.08.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Application for permission to ~~cut, prune, trim, etc.~~ alter trees.**

(a) Any person desiring to ~~remove, cut, girdle, destroy or in any manner injure, or to cut, trim, prune, alter,~~ spray or interfere with any ~~shade or fruit tree or shrub,~~ or any branch, root or part thereof, standing or growing, wholly or in partly, in any street, ~~alley or public highway right-of-way in the city or in~~ any of the ~~parkways or boulevards of the city,~~ shall first ~~make application to the board of park commissioners of the city~~ request permission from the Director for

~~permission~~ to do so. If permission is deemed ~~advisable~~ prudent, the ~~board of park commissioners~~ Director shall grant such permission.

(b) In the event of a storm, freeze or other environmental event resulting in damage to trees, the adjoining property owner will be allowed to remove broken or damaged branches in the right-of-way without permission from the Director. Disposal of debris generated by the adjoining property owner will be the responsibility of the property owner. Permission from the Director will be required for the removal of an entire tree.”

SECTION 7. Section 9.08.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Duty of person ~~cutting down or removing~~ altering; permitting wood, brush, logs, etc., to remain on sidewalk, etc., prohibited.**

It shall be the duty of any person ~~cutting down or removing~~ altering any tree, shrub, branch or root referred to in Section 9.08.020, to ~~grub out and~~ remove the stump, fill the hole with dirt and clean up and haul away all wood, brush, logs, stumps and other debris resulting from the ~~cutting or removal~~ altering of such tree. No person shall permit any wood, brush, logs or stumps to remain on any sidewalk, parking or any part of the street after a tree is ~~trimmed or removed~~ altered.”

SECTION 8. Section 9.08.050 of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Electric wires, etc.--Temporary removal or shutting-off current in order to ~~remove, trim, prune, etc.~~ alter.**

It shall be the duty of any person owning ~~or controlling~~ or having charge of wires or any other conductors of electricity, which ~~wires~~ pass through or near trees within the limits of ~~the public parks, parkways, boulevards~~ property, streets, public rights-of-way and public grounds of the city, to cause such wires to be temporarily removed or the electricity in such wires to be shut off when it is necessary in order to ~~remove, prune, trim~~ alter or treat any such trees.”

SECTION 9. Section 9.08.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same--Notice to owner ~~or person in control~~ to remove or shut off current; duty upon notice--Exception.** When it shall become necessary to shut off the electricity or remove the wires as provided in Section 9.08.050, the ~~d~~Director of the board of park commissioners shall give to the owner ~~or person in control~~ of such electrical wires ~~or transmission agencies~~, a notice ~~of such necessity to shut off or remove the wires~~. It shall be the duty of the person owning ~~or controlling~~ such wires, to, within forty-eight hours from the time of such notice, to cause the wires to be temporarily removed or the electricity to be shut off ~~therefrom~~. Where such wires are owned by a public utility company, in lieu of removing said wires or shutting off electricity, the ~~d~~Director of the board

~~of park commissioners~~ may authorize the trees to be ~~trimmed or removed~~ altered by the utility company under the supervision of the ~~board of park commissioners~~ Director at no cost to the city ~~or said board.~~”

SECTION 10. Section 9.08.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**~~“Dead or broken trees, etc.—~~Tree Nuisances Declared a nuisance.**

(a) All dead or broken trees, or branches thereof, within the corporate limits of the city, which have become dangerous, or which are likely to become dangerous to the public safety, or to ~~the occupants of~~ persons or property ~~on private premises~~ within the vicinity of the tree are hereby declared to be and constitute a public nuisance.

(b) Diseased or infested trees within the corporate limits of the City are declared to be a public nuisance.

(c) Dangerous trees within the corporate limits of the City are declared to be a public nuisance.

SECTION 11. Section 9.08.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**~~“Same--Same--Duty of owners of private premises to abate.~~** It shall be the duty of the owners of any private premises, upon which any nuisance as described in Section 9.08.070 may be located, to cause the same to be promptly abated by treating or removing any designated tree or trees. ~~All dead elm trees or~~



~~dead branches thereon shall not be left standing, but promptly removed and destroyed by burning in the manner provided by law.”~~

SECTION 12. Section 9.08.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**~~“Same--Same--Notice to remove or abate; contents.~~** It shall be the duty of the ~~Director, or other officer authorized to enforce this code, of the board of park commissioners~~ to see that due written notice, by personal service or registered or certified mail, of the existence of any nuisance as provided for in Section 9.08.070, ~~shall~~ be given to the owner or occupants of the property upon which the ~~same~~ nuisance is situated, ~~and to cause~~ The notice will require that all nuisances as defined in the above-mentioned section by Section 9.08.070, existing in the public parks, parkways, boulevards, streets, alleys or public places of the city, to be promptly removed and abated. The above-mentioned notice shall require that all such nuisances be abated within three days after such notice a designated time period, not exceeding fourteen (14) days from the date of the notice provided that an extension of one ten (10) day period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the nuisance.”

SECTION 13. Section 9.08.095 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Hearings--Right of person aggrieved by service of notices, etc.; filing of petition; setting time and place; postponement.**

Any person affected by a notice which has been issued pursuant to Section 9.08.090 who is aggrieved thereby, and who believes the same to be contrary to the policies or regulations of the city, may request and shall be granted an informal hearing on the matter before the Director or his designated representative; provided that such person shall file, in the Department of Parks and Recreation, a written petition requesting such informal hearing and setting forth a brief statement of the grounds therefor, within ten days after the day notice was served. Upon receipt of such petition, the Director shall set a time and place for such informal hearing and shall give the petitioner written notice thereof. At such informal hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The informal hearing shall be commenced not later than ten days after the day on which the petition was filed; provided that upon application of the petitioner, the Director may postpone the date of the informal hearing for a reasonable time beyond such ten day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement.”

SECTION 14. Section 9.08.098 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Same--Sustaining, modifying or withdrawing notices.** After such informal hearing as provided for in Section 9.08.095, the Director or his designated representative may sustain, modify or withdraw the notice, depending

upon his findings as to whether the provisions of this chapter and of the rules and regulations adopted pursuant thereto have been complied with. If the Director or his designated representative sustains or modifies such notice, it shall be deemed to be an order.”

SECTION 15. Section 9.08.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same--Same--Failure of occupant or owner of premises to comply with notice to abate or remove.** (a) If the occupant or owner of the private premises ~~shall~~ fails or refuses to abate such nuisance within the time specified in ~~Section 9.08.090~~ the notice, it shall be the duty of the ~~d~~Director or other officer authorized to enforce this code, of the board of park commissioners to cause such nuisance to be abated, ~~and the actual cost thereof charged to and collected from the owner of the private property, and the same shall be paid by the owner or occupant of such property.~~

(b) If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient shall have thirty (30) days from the date of the Notice to make full payment. The Notice of Cost shall state:

(1) The common or legal description of the property, or both;

(2) The nature of the violation, including relevant ordinances;

(3) The nature of the work performed to abate the violation;

(4) The costs incurred for the abatement of the violations in either a lump sum or in itemized form;

(5) That the notice is a demand for payment within thirty days from the date of notice;

(6) That failure to pay the entire amount within thirty days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;

(7) That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;

(8) That payment shall be made by check or money order made payable to the City of Wichita, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments.

(c) If the payment of costs is not made within the thirty-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the aforesaid costs, and the County Clerk shall extend the same on

the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs have been paid in full."

SECTION 16. Section 9.08.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Affixing, fastening, etc., notices, advertisements, placards, etc.**

No person shall affix, fasten or tie any notice, advertisement, placard, wire, cable or anything to any tree growing ~~within the limits of the~~ wholly or in part in or on any public streets, ~~boulevards, parkways, drives~~ rights-of-way or ~~public parks property of the city~~ without the consent of the ~~board of park commissioners~~ Director".

SECTION 17. Section 9.08.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Placing stones, cement, etc., near tree trunk.** It shall be unlawful for any person, to place or maintain upon the ground within ~~the limits of the~~ public streets, ~~boulevards, parkways, drives~~ public rights-of-way or ~~public parks property~~ of the city, any stone, cement or other substance which shall impede the free passage of water and air to the roots of any growing tree therein, without

leaving an open space of ground outside the trunk of such tree in an area not less than four square feet, without first having secured the consent of the ~~board of park commissioners~~ Director to do so.”

SECTION 18. Section 9.08.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Guards or devices to prevent injury required during erection or repair of buildings, etc.**

In the erection or repair of any building or structure in the city, the owner ~~thereof~~ shall place or cause to be placed ~~such~~ guards or devices ~~about~~ around all nearby trees within the ~~limits of the public streets, boulevards, parkways, drives~~ public rights-of-way, or public parks property of the city, as shall ~~effectually~~ prevent injury to such trees. ~~All persons, companies or corporations, during the construction or repair of any street, alley, parkway or boulevard, shall place such barricades, guards or devices around trees where mechanical machines or equipment are being operated to effectually prevent injury to such trees.”~~

SECTION 19. Section 9.08.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Planting and maintenance: rules and regulations.** The ~~board of park commissioners~~ Director shall determine when and where trees shall be planted ~~in the public~~ on parks property, public rights-of-way, and streets, the kind of trees and all matters relating to the planting and maintenance thereof within the city. It shall be the duty of the ~~board of park commissioners~~ Director to care for,

maintain and protect trees planted upon the ~~public streets, avenues and alleys~~ and public rights-of-way and to make all rules and regulations necessary therefor.”

SECTION 20. Section 9.08.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Abutting property owners on streets and avenues to keep ~~trimmed~~ pruned at minimum height.** It shall be the duty of all persons owning or controlling any real estate ~~in the city~~ abutting or adjoining any street ~~or avenue in the city~~ to ~~trim~~ prune the trees on their premises so that the limbs and undergrowth ~~therefrom~~ shall not hang or extend down over the sidewalk, or street ~~or avenue~~ abutting such property less than six feet from the level of such sidewalk, or 13.5 feet from such street ~~or avenue~~ as required by Section 11.22.020 of the Code of the City of Wichita.”

SECTION 1.2 Section 9.08.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Penalties. (a)** Any person violating any of the provisions of ~~Sections 9.08.005 to 9.08.150 inclusive,~~ of this chapter shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars or be imprisoned for not more than thirty days or be so fined and imprisoned at the discretion of the court.

**(b)** In addition to the penalty set forth above, the court may order the defendant to perform the necessary labor to repair, remove or replace trees

damaged by that person, or to pay any costs incurred by the Director related to the repair or replacement of trees damaged by that person.”

SECTION 22. The originals of Section 9.08.001, 9.08.002, 9.08.003, 9.08.005, 9.08.010, 9.08.020, 9.08.030, 9.08.040, 9.08.050, 9.08.060, 9.08.070, 9.08.080, 9.08.090, 9.08.100, 9.08.110, 9.08.120, 9.08.130, 9.08.140, 9.08.150 and 9.08.160 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 23. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law